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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,894	02/06/2004	David J. Edmondson	1643.104	8329

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EXAMINER
NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/773,894	EDMONDSON ET AL.
	Examiner	Art Unit	
	Freda A. Nelson	3628	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _16 October 2007_.

2a)☐ This action is **FINAL.** 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-4,6-10,12-16 and 18-24_ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-4,6-10,12-16 and 18-24_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 08-06) Office Action Summary Part of Paper No./Mail Date 20071222

DETAILED ACTION

The amendment received on October 16, 2007 is acknowledged and entered.
Claims 1-2, 6, 11-13, and 21-22 have been amended. Claims 3-4 and 16-17 have been
canceled. No claims have been added. Claims 1-4, 6-10, 12-16, and 18-24 are currently
pending.

Response to Arguments

Applicant's arguments filed September 5, 2007 have been fully considered but
they are not persuasive.

In response to applicant's arguments that claim 1 has been amended to clarify
that the initial price indicia is based on said historical demand for content files authored
by the respective content creators of each said first and at least second content files
and that now both claims clearly and precisely distinguish over Eglan et al., the
examiner respectfully disagrees. Eglan et al. discloses the price model for dynamically
pricing the item, the initial price for the item, and the implicit or marginal cost of the item
are stored in fields 336, 338 and 340, respectively, wherein fields 342, 344 and 346
respectively store the minimum price for the item, the maximum price for the item and
the current price for the item. The current demand, or the number of times the item was
purchased within a specified period, is maintained in field 348. A count cache
field 350 stores the number of purchases of the item since the last time the current
demand was determined. Pricing algorithm parameters field 352 can store information
such as the historical pricing and quantity ordered information for the item. In one form,
field 352 stores the price and corresponding demand for the item over the last seven

periods. It should be appreciated that depending on the dynamic pricing technique used, field 352 can store other parameters, such as the time between purchases.

The indicated allowability of claims 15, 18-20, and 23-24 are withdrawn in view of the newly discovered reference(s) to Eglan et al. (US PG Pub. 2003/0023505). Rejections based on the newly cited reference(s) follow.

Examiner's Note

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1.   Claims 1-2, 5-14, and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Eglan et al. (US PG Pub. 2003/0023505).

As per claims 1, 7-8, 15, 18, and 21-22 Eglan et al. disclose an apparatus for associating a price indicia with each of the first content tile and at least a second content file stored at a content database of a content distribution facility, each of the first and at least second content files authored by content creators, said apparatus comprising:

a content creator database forming an author index that indexes a listing of content creators together with historical indicia associated with respective content creators (paragraphs [0063],[0065])

an initial price indicia associator adapted to receive content indicia associated with each of the first and at least second content files stored at the content database and adapted to access said content creator database, said initial price indicia associator for initially pricing each of the first and at least second content files with initial price indicia, the initial price indicia formed responsive to the historical indicia indexed at said content creator database and identifying historical demand for content files authored by the content creators indexed together therewith (paragraphs, [0059]-[0060],[0063],[0136]; see FIG. 3) { the music databases 230 can store the file name of a song, the location of the file on the home music server 220, song title, artist, author, producer, distributor (label), album name, album picture, picture of the artist, musical category (i.e. rock, jazz ..), description, comments, pricing information, demand information, and/or length/size of the song along with other information relating to the song};

a price indicia adjuster adapted to receive indications of the initial price indicia

that said initial price indicia associator associates with each of the first and at least

second content files and to receive indications of demand for each of the first and at

least second content files, said price indicia adjuster for adjusting the initial price indicia

responsive to the demand therefore and for forming adjusted price indicia associated

with each of the first and at least second content files (abstract; paragraphs[0058],

[0099]) {the system dynamically adjusts pricing of the media content and delivers the

media content to the clients that order the media content at a dynamically adjusted

price; all requests for the song are initially placed with the "home" music server 220,

which is the second music server 220b in this example, and if the second, home music

server 220b is unable to process a request for the song, the second music server 220b

redirects the request to one of the other music servers 220 that has a copy of the song,

which in this case is the first music server 220a; during initialization of the dynamic

pricing system 102, a song is loaded from the master file server 214 onto the second

music server 220b, which becomes the "home" music server 220 for this particular song

and as the song becomes popular, the second music server 220b can place a copy of

the file containing the song onto the first music server 220a so as to optimize

performance of the dynamic pricing system 102; and all requests for the song are

initially placed with the "home" music server 220, which is the second music server

220b in this example, and if the second, home music server 220b is unable to process a

request for the song, the second music server 220b redirects the request to one of the

other music servers 220 that has a copy of the song, which in this case is the first music server 220a}.

Eglan et al. does not disclose said historical indicia including indicia of historical demand for content files authored by the respective content creators indexed together therewith; and the initial price indicia formed responsive to said historical demand for content files authored by the respective content creators of each of said first and at least second content files indexed together therewith; wherein the initial price indicia formed is further responsive to the delivery mechanism by which content is delivered to a respective content consumer; and wherein the initial price indicia formed is further responsive to whether a respective content consumer is a commercial content consumer or a non\-commercial content consumer, however claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 1 including a content creator database *(paragraphs [0063],[0065])*, an initial price associator *(paragraphs, [0059]-[0060],[0136])* , a price adjuster *(abstract; paragraphs[0058], [0099])* are disclosed in Eglan et al. described herein. Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

As per claims 2 and 19, Eglan et al. disclose the apparatus of claim 1, wherein the content indicia associated with each of the first and at least second content files comprise identifiers that identify the content creators of the first and at least second content files, respectively (paragraph [0060]) {the music databases 230 can store the file name of a song, the location of the file on the home music server 220, song title, artist, author, producer, distributor (label), album name, album picture, picture of the artist, musical category (i.e. rock, jazz . . .), description, comments, pricing information, demand information, and/or length/size of the song along with other information relating to the song}.

As per claims 5-6, Eglan et al. disclose the apparatus of claim 1 wherein the historical indicia responsive to which said initial price indicia associator initially prices the first and at least second content files identifies historical demand for content files authored by the content creators indexed together therewith (paragraphs [0064],[0123]) {pricing algorithm parameters field 352 can store information such as the historical pricing and quantity ordered information for the item; and alternatively or additionally, the dynamic pricing system 102 in this and other embodiments can automatically set the initial price based on default prices and/or historical prices for similar content stored in memory 112}.

As per claims 9-13 and 19-20, Eglan et al. disclose the apparatus of claim 8 wherein the inquiries relating to the purchase of the copies of the individual ones of the first and at least second content files comprise indications of purchase requests made by the content consumers (paragraph [0122]){the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

As per claim 14, Eglan et al. disclose the apparatus of claim 1 further comprising a revenue allocator adapted to receive the indications of demand, said revenue allocator for allocating revenues associated with the first and at least second content files (paragraph 0158; FIG. 30E and FIG. 31) {the owner of the dynamic pricing system 102 generates revenue by receiving a portion of the revenue generated by the sale of items on the dynamic pricing system 102}.

As per claim 21, Eglan et al. discloses wherein the initial price indicia formed is adjusted based on the delivery mechanism by which content is delivered to a respective content consumer ([0050],[0162]).

As per claims 22 and 24, Eglan et al. discloses wherein the initial price indicia formed is adjusted based on whether a respective content consumer is a commercial content consumer or a non-commercial content consumer.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like

assistance from a USPTO Customer Service Representative or access to the

automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-

1000.

FAN 12/22/2007

HANI M. KAZIMI
PRIMARY EXAMINER